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C O N F I D E N T I A L SECTION 01 OF 02 TEGUCIGALPA 000994

SIPDIS

E.O. 12958: DECL: 09/30/2019

TAGS: [PGOV](#) [PHUM](#) [KDEM](#) [HO](#)

SUBJECT: TFH01: DECREE IS UNCONSTITUTIONAL ACCORDING TO
SPECIAL HUMAN RIGHTS PROSECUTORS

REF: A. TEGUCIGALPA 990

[1](#)B. TEGUCIGALPA 989

Classified By: Ambassador Hugo Llorens, reasons 1.4 (b) and (d)

[1](#)1. (C) Summary: Special Prosecutors for Human Rights Sandra Ponce and German Enamorado told Ambassador on September 29 that they believed the decree limiting civil liberties enacted by the de facto regime on September 26 was unconstitutional and that they had initiated action calling on the Supreme Court to void it. The Public Ministry considers that the decree was issued in a questionable way, but that it is nonetheless in effect because the de facto regime has already applied it and civil liberties have already been violated. The Ambassador and the Special Prosecutors agreed to work together to pressure pro-coup media outlets to denounce the decree. End Summary.

[1](#)2. (C) The Ambassador expressed grave concern to Special Prosecutors for Human Rights Sandra Ponce and German Enamorado with regard to the executive decree passed on September 26 that extremely limited civil liberties for 45 days (ref B). Ponce and Enamorado told the Ambassador that the September 26 decree appears to be on questionable legal grounds and gave the Honduran National Telecommunications Commission (CONATEL) the power to discriminately close media outlets, which is a power they do not have as an administrative agency of the government.

Reversing the Decree

[1](#)3. (SBU) Ponce explained to the Ambassador that the Public Ministry had sent a formal request on September 29 to the Supreme Court to void the executive decree (ref A). The Public Ministry argued to the Supreme Court that Article 73 of the Honduran Constitution protects media outlets from closure and that the Micheletti decree did not suspend Article 73 of the Constitution, which cannot be suspended during a "state of exception" according to Article 197 of the Honduran Constitution.

[1](#)4. (C) Ponce explained to the Ambassador that despite questions about the legality of the September 26 decree being adopted without Congressional approval, in the eyes of the Public Ministry the decree was in effect because it had been applied and had violated some people's rights. Ponce expressed great concern that if the Supreme Court upheld the September 26 decree, it would be almost impossible to bring judicial action against human rights violations because the decree would be used as a scapegoat.

[1](#)5. (C) The Ambassador told Ponce and Enamorado it was

important to convince pro-coup media outlets that if they stay quiet and do not strongly protest this dictatorial policy, they open to the door to having the decree one day being applied against them. Ponce agreed and said that the strongest action pro-coup media outlets could take would be for the Honduran Chapter of the Inter-American Press Society (SIP) to collectively file a request in court for the decree to be overturned.

Lack of Access for Public Ministry

¶6. (SBU) Ponce and Enamorado expressed particular concern that their jobs were severely restricted under the de facto regime. Ponce told Poloff in a separate conversation that she attempted to enter the building of anti-coup Channel 36 immediately after the military closed it on September 28, but that the Honduran military personnel would not allow her to enter even after identifying herself as a Special Prosecutor for Human Rights. Enamorado also stated that they have not been granted access to the area near the Brazilian Embassy since President Jose Manuel "Mel" Zelaya's arrival on September 21. The Ambassador concluded the meeting by thanking Ponce and Enamorado for their work defending human rights in Honduras during this very difficult time.

¶7. (C) Comment: This is the first time the Special Prosecutors have directly challenged a de facto regime policy with court action. Many sectors of society have expressed concern about the broad scope of the decree and its impact on the electoral process. Hopefully, this vocal criticism will convince de facto regime leader Micheletti to rescind the

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decree.
LLORENS